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2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 FRONTIER AIRLINES, INC.,

6 Plaintiff,

7 - against -

8 AMCK AVIATION HOLDINGS IRELAND
9 LIMITED, ACCIPITER INVESTMENT 4
10 LIMITED, VERMILLION AVIATION (TWO)
11 LIMITED, WELLS FARGO TRUST COMPANY,
12 N.A., solely in its capacity as OWNER
13 TRUSTEE, and UMB BANK, N.A., solely in
14 its capacity as OWNER TRUSTEE,

15 Defendants.

16 CASE NO.: 1:20-cv-09713-LLS

17 -----x

18

19 * * * C O N F I D E N T I A L * * *

20

21 ZOOM VIDEOCONFERENCE

22

23 April 6, 2022

24 9:02 a.m. MDT

25

26 DEPOSITION of JAMES DEMPSEY, before
27 Melissa Gilmore, a Stenographic Reporter and
28 Notary Public of the State of New York.

29

30 Job No. NY5155657

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2 A P P E A R A N C E S:

3 LANE POWELL PC

4 Attorneys for Plaintiff

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9

10

11 CLIFFORD CHANCE US LLP

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15 BY: JEFF BUTLER, ESQ.

16 GEGE WANG, ESQ.

17 E-MAIL jeff.butler@cliffordchance.com

18 ggee.wang@cliffordchance.com

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2 J A M E S D E M P S E Y , called as a
3 witness, having been duly placed under
4 oath by a Notary Public, was examined and
5 testified as follows:

6 MR. BUTLER: David, why don't we
7 introduce ourselves for the record?

8 My name is Jeff Butler. I'm from
9 the law firm of Clifford Chance
10 representing AMCK and the other defendants
11 in this action. With me today is my
12 colleague, Gege Wang.

13 MR. HOSENPUUD: David Hosenpud on
14 behalf of Frontier Airlines with Lane
15 Powell.

16 EXAMINATION BY

17 MR. BUTLER:

18 Q. All right. Good morning,
19 Mr. Dempsey.

20 A. Good morning.

21 Q. Could you please state your full
22 name for the record?

23 A. James Dempsey.

24 Q. And where do you currently reside?

25 A. In Colorado.

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2 A. I need to read it to answer that
3 question. (Document review.)

4 Yes, you can see the request in
5 point 1.

6 Q. And were similar letters sent to
7 Frontier's other lessors on or about March 16,
8 2020?

9 A. I didn't send them out, but my
10 recollection is that every lessor or largely
11 every lessor received one of these. I think
12 every lessor received one.

13 Q. Were you involved in drafting this
14 letter or the template for this letter?

15 A. No.

16 Q. Do you think that you reviewed it
17 before it was sent?

18 A. I did see it before it was sent,
19 yes.

20 Q. I would like to direct your
21 attention to the second page of this exhibit.
22 It says FRONTIER241 at the bottom.

23 And the language just below the
24 number 1 and number 2, it says, "The above
25 concessions would be documented in a mutually

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2 agreed deferral and concession agreement."

3 Was it your expectation, at this

4 time, Mr. Dempsey, that any deferral that might

5 be agreed with AMCK would be documented in a

6 formal agreement?

7 A. That's what we were endeavoring to

8 do.

9 Q. If you look a little bit further up

10 at the two numbered points, number 1 says --

11 well, just above that it says, "Accordingly, we

12 request the prompt implementation of the

13 following measures." And then number 1 says,

14 "All lease rent payments due between the date

15 of this letter and June 30, 2020, will be

16 deferred."

17 Do you see that?

18 A. Yes.

19 Q. So was the initial request from

20 Frontier then to request a deferral of all rent

21 from the date of this letter, March 16, through

22 June 30, 2020?

23 A. The intent of the letter was to

24 effectively receive a three-month deferral in

25 rent expiring on June 30 and that it would be

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2 Q. So you made a request for
3 concessions under the Lease Agreements, and at
4 some point later, AMCK made requests --
5 requests for concessions under the Framework
6 Agreement; is that correct?

7 A. Yes.

8 Q. And was there anything wrong with
9 AMCK in the circumstances of the pandemic
10 making a request for concessions to Frontier?

11 A. We were asking AMCK to honor their
12 agreement with us because we had a binding
13 agreement with AMCK, and we had impending
14 aircraft deliveries that we had to satisfy with
15 Airbus. And so we did ask AMCK to honor that
16 binding agreement.

17 Q. So you did think there was something
18 wrong with AMCK asking Frontier for concessions
19 under the Framework Agreement; is that correct?

20 A. Subsequent to them asking us for
21 concessions under the Framework Agreement, it
22 became clear to us that AMCK wanted to adjust
23 our binding agreement, and we asked them to
24 honor that.

25 Q. Well, you referred to binding

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2 Q. And did you understand it to mean
3 that at the time you received this e-mail?

4 A. We were -- we were negotiating at
5 that time, and so -- in relation to the rent
6 deferral. We were trying, at that point, to
7 achieve concessions from Airbus to satisfy
8 AMCK's request.

9 And so at that point in time, we
10 were attempting to achieve something that
11 worked for both parties. So this certainly was
12 not a final agreement.

13 Q. And did you understand that any
14 final agreement would be in writing?

15 A. Yes. Not necessarily in writing,
16 but certainly agreed in some form. And, you
17 know, given our previous letter, we would have
18 been keen to paper the rent deferral request
19 that we put out to each of our leasing
20 companies. But some leasing companies did it
21 through e-mail, some leasing companies did it
22 through a formal agreement. There wasn't
23 one-size-fits-all for each of the requests at
24 that time.

25 Q. Is it fair to say, though, that you

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2 expected some kind of writing, some kind of
3 final writing to reflect the deferral
4 agreement?

5 A. Well, we had worked with Paul
6 Sheridan for some time, and given that he is
7 the chief executive of the leasing company, we
8 also would have managed this on a relationship
9 perspective. We had a very good relationship
10 with AMCK, and we would have taken his word to
11 be something that we could rely upon, given
12 that he is the chief executive of AMCK.

13 Q. Well, I'm sure your confidence is
14 well placed in Mr. Sheridan, but my question,
15 sir, is, did you expect a rent deferral
16 agreement with AMCK to be embodied in some kind
17 of final writing?

18 A. Yes, we tended to be flexible with
19 the format that the leasing companies wanted to
20 agree with us.

21 MR. BUTLER: Let me show you the
22 next exhibit. I'm showing document
23 FRONTIER310 to 311.

24 (Dempsey Exhibit 4, E-Mail Chain,
25 Bates Stamped FRONTIER310 through 311,

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2 for anything in return?

3 A. Did I hope? Yes.

4 Q. Is there any other reason

5 Mr. Sheridan's response was disappointing to
6 you?

7 A. Well, we couldn't satisfy his
8 request. We had no control over that. So yes,
9 that is disappointing because we had no
10 mechanism to institute what he was asking us to
11 do.

12 Q. Did you believe, at this time, that
13 you had no way to get -- to delay the
14 deliveries under the aircraft Purchase
15 Agreement?

16 A. At this point, we really didn't know
17 what was feasible with Airbus. All we knew,
18 after Paul asking for a six-month deferral, was
19 that Airbus said no.

20 And we were working very hard to try
21 and get relief from everybody, as I mentioned
22 earlier, all of our suppliers, including
23 Airbus, in relation to managing the pandemic,
24 and one of those tools was to ask them to move
25 aircraft deliveries. And Airbus was not

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2 interested.

3 Q. Well, you received this e-mail from
4 Mr. Sheridan on April 3, and then you responded
5 on April 6.6 Between those dates, did you reach
7 out to Airbus and ask them whether a six-month
8 delay in the deliveries relating to AMCK would
9 be feasible?10 A. We were speaking to Airbus
11 regularly, yes.12 Q. Well, did you personally communicate
13 with Airbus regarding --

14 A. I did.

15 Q. -- delivery delays?

16 A. Yes, I did.

17 Q. And did you personally reach out to
18 Airbus during this -- after receiving this
19 e-mail from Mr. Sheridan to determine whether
20 Airbus would be agreeable to a six-month delay
21 in the upcoming deliveries?22 A. We sought their input into what they
23 could do with us in relation to moving aircraft
24 deliveries inclusive of Paul's request. And
25 within my e-mail, you can see that they have

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2 bluntly said no.

3 Q. Well, I'm asking something more
4 specific. I'm asking what you personally did.5 Did you personally ask Airbus for a
6 six-month delivery delay in the aircraft
7 covered by the Framework Agreement?8 A. Yes, we asked Airbus to satisfy this
9 request.10 Q. My question, sir, was directed at
11 you personally.

12 A. I personally did it, yes.

13 Q. You personally asked for a six-month
14 delay; is that correct?15 A. We were in discussions with Airbus
16 in managing a fleet program that encompasses
17 six or seven years, and part of that discussion
18 was trying to get relief for AMCK.19 Q. And my question, sir, is, did you
20 ask for a six-month delay or did you ask for
21 something else?22 A. I asked them to move the aircraft
23 out of 2020, so that would have been greater
24 than a six-month delay.

25 Q. And when did you make that request

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2 to Airbus?

3 A. In this period. Prior to this
4 e-mail.

5 Q. Who did you make that request to?

6 A. I had a telephone conversation with
7 our relationship manager -- well, my
8 counterpart, Christopher Jones.9 Q. And what did Mr. Jones say in
10 response?

11 A. No.

12 Q. Did he say anything else?

13 A. He said it wasn't feasible and that
14 the aircraft are built and you need to turn up
15 and deliver them.16 Q. Going back to Exhibit 4, you go on
17 to say, in your e-mail to Mr. Sheridan, this is
18 beginning in the middle of the second line, "As
19 a result, I can only deduce that you will
20 finance the aircraft deliveries and honor your
21 commitment to Frontier if we do not put a rent
22 deferral in place."

23 Did I read your e-mail correctly?

24 A. (Document review.)

25 I said, "I can only deduce that you

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2 will finance the aircraft deliveries and honor
3 your commitment to Frontier if we do not put a
4 rent deferral in place."

5 Q. And what did you mean by "do not put
6 a rent deferral in place"?

7 A. That we do not institute a rent
8 deferral with AMCK.

9 Q. Does that mean that you would pay
10 all the rent on time?

11 A. That's exactly what it means.

12 Q. Okay. Did you understand at that
13 time that, if Frontier paid all of its rent on
14 time, that AMCK would be required to take
15 deliveries under the Framework Agreement?

16 A. Yes, we were well aware that we had
17 a binding agreement. We were trying to work on
18 a relationship basis with AMCK.

19 Specifically, I was speaking to
20 their chief executive about this, and we were
21 under pressure from Airbus to deliver the
22 aircraft to Frontier, and part of that
23 requirement is to have a financier.

24 And so we were looking for AMCK to
25 confirm that they would actually deliver the

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2 aircraft.

3 Q. And your understanding is that, if
4 Frontier paid all of its rent on time, that
5 AMCK would have no choice under the Framework
6 Agreement but to finance the upcoming
7 deliveries, correct?8 A. Correct, otherwise they would have
9 been in default.

10 Q. Let me show you the next exhibit.

11 MR. BUTLER: I have marked, as
12 Dempsey Exhibit 5, a document bearing
13 Bates numbers FRONTIER3480 to 82.14 (Dempsey Exhibit 5, Text Messages,
15 Bates Stamped FRONTIER0003480 through 82,
16 marked for identification.)17 MR. BUTLER: I'm sorry. I actually
18 want to mark two exhibits at this time.
19 That was Exhibit 5.20 I would also like to mark, as
21 Dempsey Exhibit 6, a document bearing
22 Bates numbers FRONTIER3488 to 3489.23 (Dempsey Exhibit 6, Text Messages,
24 Bates Stamped FRONTIER0003488 through
25 3489, marked for identification.)

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2 is clear.

3 Q. But is that your understanding of
4 these texts?5 A. Without reading them, I cannot
6 confirm, but it looks like they were texts sent
7 on the 6th of April, so I assume they were --

8 Q. And do those look like your texts?

9 A. (Document review.) Yes.

10 Q. Okay.

11 MR. BUTLER: I'm not sure whether
12 this is going to be legible enough, but,
13 Gege, can you try putting these two sets
14 of text messages side by side so that we
15 can try to see the exchange?16 Q. And I'm just not sure whether this
17 is going to be easy enough to read, but we can
18 always put up the full document for you.19 MR. BUTLER: Can you zoom in a
20 little bit more?21 Q. These text messages were produced to
22 us in this form with all the texts from
23 Mr. Thwaytes in one document and all of your
24 texts in another. So in order to see the
25 exchange of texts, we're going to have to move

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2 back and forth between the two documents.

3 If we were in a room together, I
4 would just put the two of them in front of you,
5 and this is the best we can do on a screen.6 So let me ask you about -- what we
7 have basically done is put on the screen, for
8 the record, a side-by-side comparison of
9 FRONTIER3480 and FRONTIER3488, the first page
10 of Exhibit 5 and Exhibit 6.11 And if you look at the -- to the
12 right of the screen at the top, it looks
13 like -- well, these are all text messages on
14 April 6, 2020. And it looks like the first one
15 is a text from Robert Fanning at 7:43 a.m., and
16 he says, "Hi Jimmy, when you have time this
17 morning, need to talk about AMCK, we have a
18 rent payment due today."

19 Do you see that text?

20 A. Yes.

21 Q. And it looks like, going to the left
22 side of the page, you respond at 7:44 a.m.23 MR. BUTLER: And, Gege, maybe you
24 can zoom in on that left side.

25 Q. It looks like you respond saying,

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2 "Yes. Been thinking about how we respond. If
3 we pass on the rent deferral, will they deliver
4 the aircraft?"

5 Did I read that correctly?

6 A. Yes.

7 Q. And was that a text you sent to
8 Mr. Fanning on April 6, 2020?

9 A. Yes.

10 Q. And what did you mean by that?

11 A. Which part?

12 Q. The part that I just read, your
13 text.

14 A. You read the entire text. Yeah, I
15 mean, we were considering how to respond to
16 Paul. We had an impending aircraft delivery.
17 At this point, it was pretty soon, and we were
18 trying to figure out if they were going to
19 default on their agreement or not.

20 Q. Well, the text that I just read from
21 Mr. Fanning was about a rent payment due that
22 day.

23 A. Well, no, actually, the question
24 was, will they deliver the aircraft, which was
25 a direct question about are they going to turn

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2 up and finance the aircraft.

3 Q. Right. Okay. I'm sorry if I
4 misunderstood that.5 A. That was the risk that we faced
6 right there and then.7 Q. So were you asking Mr. Fanning, if
8 you pay the rent on April 6, will they come
9 through with the future deliveries?10 A. In this context, I'm talking about
11 one aircraft, but yes, I'm effectively asking
12 the question, are they going to finance our
13 aircraft.

14 Q. And --

15 A. And what I'm doing is asking his
16 opinion because over the previous week or two,
17 the conversation that we were having with them
18 had developed where they were asking us -- we
19 had asked them for a concession, then they
20 started asking us for a concession.21 And so I was trying to understand
22 his thinking on the situation because we had an
23 impending aircraft delivery.24 Q. And were you, at this point in time,
25 thinking of making the rent payments that were

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2 due on April 6?

3 A. Yes, we were capable of making the
4 rent payments. What we were trying to do at
5 the time was maximum Frontier's liquidity and
6 obtain rent deferrals with leasing companies,
7 but we also had to honor our commitment to
8 Airbus.

9 And so we were trying to balance the
10 two items. And so we were considering whether
11 it made sense on this day to make the rent
12 payment or not, and we were trying to ascertain
13 what -- whether they were going to deliver on
14 their agreement with us.

15 Q. Okay. Let me ask you this --

16 MR. BUTLER: Gege, I think the
17 magnification here is great. Can you just
18 scroll over to the Fanning side of the
19 conversation?

20 Q. And I want to ask you about his
21 response at 7:45 a.m. He writes, "Well, I've
22 been working on {redacted} as an option taking
23 delivery of that aircraft and the next five."

24 What did you understand Mr. Fanning
25 to be saying here?

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2 A. He was saying that he is trying to
3 find an alternative financier for the aircraft.

4 Q. And is it correct that, at this
5 point in time, April 6, Frontier was exploring
6 alternative options for financing the
7 deliveries that otherwise would be financed by
8 the Framework Agreement?

9 MR. HOSENPUDE: Object to the form.
10 You can answer.

11 A. Okay. We were -- our primary focus
12 was on AMCK because we had a binding agreement
13 with them at that time, and they had just
14 signed it to deliver the aircraft. We were
15 also concerned about our posture around asking
16 for concessions.

17 And so we were trying to see if
18 there were alternatives in the marketplace
19 because we were nervous about the developing
20 situation with AMCK and the fact that Airbus
21 was insisting on us taking delivery of the
22 aircraft on schedule.

23 Q. So as early as April 6, 2020, you,
24 at Frontier, had concern that AMCK may not
25 finance deliveries under the Framework

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2 Agreement; is that correct?

3 A. We did not know.

4 Q. And you were uncertain enough to be
5 exploring other financing options with other
6 lessors, correct?7 A. We were trying to figure out where
8 the market was and whether there was
9 alternative financing options. We were
10 concerned that AMCK, even though they had just
11 signed the agreement, that their posture was
12 changing.13 And you will see, in my earlier
14 e-mail where I asked Paul directly, are you
15 going to honor the agreement. I'm not sure if
16 that's before or after these texts, but
17 clearly, we were asking them to confirm to us
18 that they were going to deliver these aircraft.19 Q. And it looks from this text as
20 though there was enough concern, at this time,
21 to be reaching out specifically to another
22 lessor about taking those deliveries; is that
23 correct?24 MR. HOSENPUDE: Object to the form,
25 misstates.

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2 You can answer.

3 A. Can you repeat the question, please?

4 Q. My question, sir, is, was there
5 sufficient concern, as of April 6, that
6 Frontier was reaching out to a -- specifically
7 to another leasing company about taking
8 delivery of the aircraft covered by the
9 Framework Agreement?10 A. Yes, for two reasons. One was we
11 were concerned about AMCK, and secondly, you
12 know, AMCK had asked us for relief of six
13 months. And if we were capable of moving
14 aircraft deliveries around in their favor by
15 finding another alternative financing partner,
16 we may have been able to satisfy their request
17 in a different format.18 And so there were multiple things
19 happening in this at that time. The primary
20 concern was whether AMCK would show up for and
21 finance the next aircraft delivery, which they
22 were due to finance and had agreed to finance.23 Q. I just want to make sure I
24 understand your previous answer.

25 So AMCK had asked for a six-month

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2 delay in the deliveries.

3 Do I understand correctly that one
4 of the options that you considered was just
5 getting another leasing company to step in for
6 the near-term deliveries and then you could use
7 AMCK to finance subsequent deliveries under the
8 Framework Agreement?9 A. That was one option that failed, but
10 yes, we were -- we were assessing that.11 Q. Okay. I want to go back to the --
12 to your set of text messages on the other side.
13 This will be on Exhibit 6.14 At 7:45, it looks like you -- or
15 7:46, it looks, perhaps, that you write back to
16 Mr. Fanning, "Do we know whether AMCK will turn
17 up?"18 And consistent with what you said
19 before, it looks like you're asking him, hey,
20 are they going to turn up and finance these
21 upcoming deliveries; is that right?

22 A. That's exactly right.

23 Q. Okay. Going back to the Fanning
24 side of the conversation, it looks like at 7:46
25 and 33 seconds, Mr. Fanning writes "David Wang"

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2 has made a request to Beijing, so I'm waiting
3 to hear back."

4 Who was David Wang?

5 A. Well, his name should have been
6 redacted.7 MR. HOSENPUDE: Yeah, this should
8 have been redacted based on other lessors,
9 and so you can speak in terms of another
10 lessor.11 A. So, yes, he does work for another
12 lessor, so his name should have been redacted.13 Q. I don't agree that his name should
14 have been redacted or the name of his company
15 should be redacted. So let me ask you, what
16 company did Mr. Wang work for?17 MR. HOSENPUDE: Counsel, for the
18 record, AMCK redacted or attempted to
19 redact all of its other lease clients
20 whose -- with whom it was doing business
21 dealings concerning rent deferrals.22 We have -- and I have revealed this
23 to Mr. Alexander, we have discovered that
24 there were errors in those redactions, and
25 we made a representation that they needed

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2 to address that if they wanted to and that
3 we would not ask questions about those
4 other arrangements. This falls into the
5 same category.

6 MR. BUTLER: I understand your
7 statement, but I still have the question.

8 Q. Which company did Mr. Wang work for?

9 DI MR. HOSENPUDE: I'm going to object,
10 Counsel, and ask the witness not to
11 answer.

12 Q. Did Mr. Wang work for ICBC Financial
13 Leasing?

14 MR. HOSENPUDE: Same objection.

15 MR. BUTLER: Are you instructing the
16 witness not to answer?

17 DI MR. HOSENPUDE: I am.

18 MR. BUTLER: I am asking him about
19 public information that I took off the
20 internet. There is nothing confidential
21 about Mr. Wang or his employer.

22 Are you going to stand by your
23 objection?

24 MR. HOSENPUDE: If that's what -- if
25 that's the source of your information,

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2 that you have found public information
3 about Mr. Wang and who he works for, then
4 he can answer.

5 THE WITNESS: So do I answer?

6 MR. HOSENPUDE: Yes.

7 A. Yes, David Wang works for ICBC.
8 Q. And just to close out the record,
9 was ICBC Financial Leasing the other company
10 you reached out to about potentially financing
11 upcoming deliveries?

12 A. I think this text makes it very
13 clear that Robert reached out to David on
14 financing the aircraft.

15 Q. At this time, did Frontier reach out
16 to any other leasing companies about
17 potentially financing the deliveries otherwise
18 covered by the Framework Agreement?

19 A. I think we did, but I don't have a
20 recollection of exactly who we reached out to,
21 and Robert Fanning would have done that.

22 Q. Just going down to Robert Fanning's
23 next text, which I think he sent before you
24 sent any response, it's April 6, 2020, at
25 7:47 a.m. He says, "As for your question, I'd

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2 have to ask Jane, I don't know the answer.
3 Well, based on their last e-mail, they can't
4 turn up since their financier has conditions."

5 Did I read that correctly?

6 A. You read the text correctly.

7 Q. Was Mr. Fanning responding to your
8 question about whether AMCK would show up?

9 A. I assume so, but you would have to
10 ask Robert.

11 Q. And did you understand Mr. Fanning
12 to be saying --

13 A. He doesn't know.

14 Q. That he doesn't know. Okay. Or did
15 you understand him to be saying no, they're not
16 going to show up?

17 A. We didn't know. We were trying to
18 ascertain whether they would show up or not
19 and, hence, I asked Paul Sheridan the direct
20 question.

21 Q. I understand that. I think we are
22 going to get to the e-mail subsequently where
23 you asked him that question, but since you
24 raised it a couple times, what did Mr. Sheridan
25 say in response to your question?

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2 A. I don't recall him directly
3 answering that question, but maybe you have
4 evidence to the contrary.

5 Q. So your recollection, as you sit
6 here today, is that you asked Mr. Sheridan a
7 direct question of whether -- whether AMCK
8 would finance the upcoming deliveries under the
9 Framework Agreement, and you did not get an
10 affirmative answer from Mr. Sheridan; is that
11 your memory?

12 A. That is correct. My memory is we
13 got a conditional answer based on certain
14 conditions that they wanted. So I never
15 received comfort that they would turn up even
16 if I paid the rent that was due on those
17 aircraft.

18 Q. And did that make you feel that you
19 should not pay the rent?

20 A. No, we continued to negotiate
21 because, as I said earlier, we were working
22 with our partner in trying to find a solution
23 with them, and we continued to do so.

24 Q. After April 6 when you got a
25 short-term grace period from Mr. Sheridan and

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2 A. Yes.

3 Q. Okay. Now, I want to show you some
4 subsequent texts. We are going to show you
5 side by side FRONTIER3482 and FRONTIER3489.
6 It's the second page of Exhibit 6 and the third
7 page of Exhibit 5.

8 And at the top of the text from
9 Mr. Fanning, it looks like at 1:11 p.m. on
10 April 6, he writes, "Paul and Jane are
11 available in 20 minutes for a call."

12 Do you see that?

13 A. Yeah.

14 Q. And then going to the other side of
15 the screen, it looks like you respond at
16 1:13 p.m.

17 MR. BUTLER: You have to go down a
18 little bit to find Mr. Dempsey's response.
19 Right there.

20 Q. It looks like you respond, "I can't
21 make it. You have the call."

22 Did I read that correctly?

23 A. Yes.

24 Q. And then going back to Mr. Fanning's
25 text on the other side of the page, it looks

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2 like at 1:38 p.m., so about a little more than
3 half an hour later, he writes to you and says,
4 "Paul Sheridan will sending your an e-mail
5 deferring all rent payments for ten business
6 days to give us room to work out a solution."

7 Did I read that text from
8 Mr. Fanning correctly?

9 A. Yes.

10 Q. And do you recall getting that
11 message from Mr. Fanning that Paul Sheridan had
12 agreed to a ten-business day grace period?

13 A. I recall the ten-business day grace
14 period, yeah. I mean, the text itself -- I
15 mean...

16 Q. Okay. And just going back to your
17 texts on the other side of the page to close
18 out the discussion, it looks like you respond
19 at 1:39 p.m. and you say, "Great."

20 Is that your understanding as well?

21 A. Yes, but I'm not sure if this was in
22 response to his text or not.

23 Q. Okay. Well, his text was at
24 1:38 p.m. and your text is at 1:39 p.m. From
25 those time stamps, would you say you're

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2 MR. HOSENPUDE: Thank you.

3 Q. Mr. Dempsey, it looks like you can
4 ignore the top e-mail where your colleague,
5 Mr. Fanning, is forwarding this e-mail. I want
6 to focus your attention on the second e-mail on
7 this page, which is an e-mail from Paul
8 Sheridan to you dated, Monday, April 6.

9 Do you see that?

10 A. I see it.

11 Q. Did you receive this e-mail from
12 Mr. Sheridan on that date?

13 A. I would assume that I did.

14 Q. You have no reason to doubt that you
15 received it, correct?

16 A. No.

17 Q. In this e-mail, this is confirming
18 the ten-day grace period that Mr. Fanning told
19 you about and Mr. Sheridan clarifies here that
20 the grace period will end on the 21st of April,
21 correct?

22 A. Yes.

23 Q. Let me show you the next exhibit.

24 MR. BUTLER: I have marked, as
25 Exhibit 8, a document bearing Bates

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2 numbers FRONTIER314 to 316.

3 (Dempsey Exhibit 8, E-Mail Chain,
4 Bates Stamped FRONTIER0000314 through 316,
5 marked for identification.)6 Q. And you'll see that this document,
7 which maybe I should have used in the first
8 place, has the same e-mail from Mr. Sheridan in
9 the middle of page, correct?

10 A. Yes.

11 Q. And then up above, there is an
12 e-mail where you respond to Mr. Sheridan.13 Did you send this e-mail to
14 Mr. Sheridan on April 6, 2020?15 A. Yes. We had a subsequent call
16 the -- I don't know -- I think it was the
17 following day, but yes.18 Q. And in your e-mail you write, "Hi
19 Paul, I appreciate this. As you know, this
20 will continue to be a challenge with Airbus and
21 I would hope that you reconsider your position
22 on financing. Let's catch up tomorrow."

23 Did I read your e-mail correctly?

24 A. Yes.

25 Q. What was Mr. Sheridan's position on

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2 financing that you wanted him to reconsider?

3 A. That they wanted a concession on the
4 binding deal that they had done with us.5 Q. So they asked for a concession. You
6 wanted him to withdraw that request for a
7 concession; is that right?8 A. Yes, because I didn't feel it was a
9 balanced deal. They were asking us to entirely
10 change a deal we had with them, recently
11 agreed, in return for us deferring rent. I
12 didn't believe that the deferral request with
13 them was matched by a similar level of
14 concession from us to them in relation to that
15 deal. And so that was my issue.16 Q. You end your e-mail by saying,
17 "Let's catch up tomorrow."18 Did you, in fact, have a telephone
19 call with Mr. Sheridan on April 7, 2020?20 A. My recollection is we had a call
21 shortly -- yes, on April 7.22 Q. Was that call something that was
23 scheduled in advance or did one of you just
24 call the other?

25 A. I don't recall. I don't remember.

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2 Q. So you don't recall whether you
3 called him or he called you?

4 A. I don't remember.

5 Q. What was the reason for the call, in
6 your mind?

7 A. I wanted to discuss with him the
8 fact that Mobile had been closed for April,
9 that that would give them relief on delivering
10 the aircraft in April. I felt that he should
11 give us a longer rent deferral than ten days
12 because it would take us longer than that to
13 solve our challenges with Airbus that Accipiter
14 was -- or AMCK was presenting to us.

15 And so we needed to have a
16 conversation to outline our positions and to
17 try and progress this matter.

18 Q. So do I understand correctly that,
19 by this time, you knew that the Mobile Airbus
20 facility was closing temporarily and that
21 all -- all deliveries would be delayed by at
22 least a little while from Airbus?

23 A. If you scroll down in your
24 e-mails -- if you scroll down on this page,
25 please.

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2 MR. BUTLER: Gege, could you scroll
3 down?4 A. I think it's spelled out very
5 clearly. I sent Paul an e-mail saying, "Are
6 you available for a call? Airbus has closed
7 Mobile until April 29."8 Q. Okay. So this is the call that
9 you're referring to?

10 A. Yes.

11 Q. But you don't remember whether Paul
12 called you or you called Paul?13 A. I don't recall. I don't know why it
14 matters.

15 Q. Was anyone else on the call?

16 A. I don't recall. I think it was a
17 call between Paul and I, but I cannot confirm
18 that.19 Q. Do you remember what time of day the
20 call took place?21 A. I think it was likely morning my
22 time, afternoon his time, given the time zone
23 difference.24 Q. Is that typically the time that you
25 would have a telephone conversation with

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2 Mr. Sheridan?

3 A. Yes.

4 Q. How often were you speaking to
5 Mr. Sheridan around this time? Was this call
6 an unusual event or something that happened
7 very frequently?8 A. I mean, I don't recall how
9 frequently we spoke, but around this time, we
10 spoke on multiple occasions.11 Q. Okay. On this particular call where
12 you discussed the Mobile facility situation,
13 what else do you remember about that call?14 A. Paul and I agreed that we would deal
15 with the rent deferrals on a month-to-month
16 basis. And so, therefore, we didn't have any
17 rent due for the rest of April.18 And so we were working on the basis
19 of that, and that we would continue trying to
20 find a solution that helped them with the
21 timing of delivery of the aircraft. And we
22 worked towards a rent deferral of longer than
23 the month-to-month basis.24 Q. You said that you agreed to a
25 month-to-month deferral.

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2 Did you ask Mr. Sheridan for a
3 month-to-month deferral?4 A. We discussed it. It was raised on
5 the call that, given the change in Mobile, that
6 we should look at this on a month-to-month
7 basis because clearly the delivery of the
8 aircraft was being moved into May at the
9 earliest.10 Q. Do you remember what Mr. Sheridan
11 said about the month-to-month deferral idea?12 A. Yes, he said that he would agree to
13 a month-to-month rent deferral.

14 Q. Were those his exact words?

15 A. I don't recall his exact words, but
16 that was the essence of what he said.

17 Q. You said he would agree to it.

18 Was it your expectation that this
19 month-to-month deferral would be documented in
20 writing?21 A. I had been given an undertaking by
22 Paul that we would move to a month to month as
23 opposed to ten days, and as a result, I took
24 his word for it. What we really wanted to do
25 was document a longer term solution to the

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2 issues that existed.

3 Q. In your discussion with
4 Mr. Sheridan, how did you expect the
5 month-to-month deferral to work?6 A. We wouldn't pay any rent and
7 continue the negotiations.

8 Q. What would be --

9 A. And, you know, our task was to, you
10 know, provide relief from aircraft deliveries
11 in Airbus, so that they could move the
12 financing requirement out, and we would not
13 have to pay rent while we tried to negotiate
14 that.15 Q. So was it your understanding that
16 this was an indefinite deferral of rent under
17 your agreements with AMCK?18 A. No, it was a fluid situation, but
19 clearly, at this point, it was for the month of
20 April.21 Q. So by month to month, you understood
22 the deferral to be for the month of April; is
23 that right?24 A. My understanding was, at this point
25 in time, my understanding was that their

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2 position was that they would facilitate a rent
3 deferral for April, and we would continue to
4 work on a longer term solution. And so we were
5 working on that basis.

6 It was subsequently -- subsequently,
7 the negotiations developed where they were
8 looking for us to be current on May 15, and so
9 we were dealing with a continuous moving date
10 as we were negotiating with Airbus.

11 And my point of view at the time was
12 that it would take some time to get agreement
13 with Airbus longer than towards the end of
14 April, but we were endeavoring to try and do
15 that, and that's what we were working hard on
16 in the background with Airbus on achieving for
17 our partners and principally -- and to solve
18 for the short-term financing needs in our
19 business.

20 Q. Going back to the April 7 call with
21 Mr. Sheridan, I think you said it was a
22 deferral for the month of April.

23 So Mr. Sheridan obviously extended
24 to you a grace period through April 21 in his
25 April 6 e-mail.

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2 Is it your recollection that the
3 next day Mr. Sheridan agreed to a grace period
4 that would extend at least to April 30?

5 A. The way it was deemed was we will
6 deal with this on a month-to-month basis, and
7 so yes, it was at least till the end of April
8 with, you know, an overall solution to be
9 worked out in the intervening period.

10 Q. When you use the term "month to
11 month," does that mean that basically you're
12 agree one month at a time? So, first, let's
13 agree to the end of April, then later we'll
14 agree to the end of May, if it's necessary?

15 A. Correct.

16 Q. And what is the -- so if that's the
17 deferral that you talked about with
18 Mr. Sheridan, what did you discuss about
19 repayment?

20 A. We said that we would solve that in
21 the overall deal we were putting together.

22 Q. Did you discuss, during your call on
23 April 7, the repayment period for the rent
24 deferred for the month of April?

25 A. I don't recall it being as granular

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2 as discussing exactly when we would repay it
3 and what AMCK at the time were proposing to us
4 or developed into around that time was a -- and
5 we had to be current on all our rent in order
6 to deliver the aircraft.

7 Q. Was there any discussion on your
8 April 7 call with Mr. Sheridan about the
9 interest rate that Frontier would pay on the
10 deferred amounts?

11 A. No, I don't recall any discussion on
12 interest rates. It wasn't the primary issue.

13 Q. And I think I asked you this
14 question before, but just to be clear, did you
15 expect that month-to-month agreement with
16 Mr. Sheridan to be documented in a written
17 agreement between the parties?

18 THE WITNESS: Go ahead, David.

19 MR. HOSENPUDE: Just objection, asked
20 and answered.

21 You can answer.

22 A. We were working towards a more
23 formalized agreement overall. And so, I mean,
24 I took his word given that he was the chief
25 executive of the company that he had provided

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2 us with that.

3 Q. Did you ask Mr. Sheridan to confirm
4 the month-to-month arrangement in writing?5 A. I don't recall. I do recall
6 instructing Robert Fanning -- or, sorry --
7 confirming to Robert Fanning that he had agreed
8 to that.9 Q. Did you ask Mr. Fanning to confirm
10 that in writing with AMCK?11 A. I don't recall if I did. I don't
12 see -- I don't recall it being an issue given
13 that I received this from Paul, who is the
14 chief executive.15 Q. Did you consider shooting an e-mail
16 to Paul saying, hey, just to confirm our
17 understanding, and maybe writing out what you
18 had agreed to?

19 A. I don't recall.

20 MR. BUTLER: Let me show you the
21 next exhibit, which we are going to mark
22 as Dempsey Exhibit 9.23 This is a single exhibit with two
24 different documents with different Bates
25 numbers. It's FRONTIER3493 and

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2 FRONTIER12172 .

3 (Dempsey Exhibit 9, Text Messages,
4 Bates Stamped FRONTIER0003493 and
5 FRONTIER0012172, marked for
6 identification.)7 Q. I put these two documents together
8 because I think they are an exchange of text
9 messages. I have your text messages on the
10 first page and Mr. Fanning's text messages on
11 the second page. They're all from the same
12 day, April 7, 2020.

13 A. Yeah.

14 Q. And I want to focus your attention,
15 first, on the top of the first page, which I
16 think is your text message to Mr. Fanning. You
17 write, "Just spoke to Paul Sheridan. He has
18 agreed to do the deferral on a month to month."

19 Did I read that correctly?

20 A. Yes.

21 Q. And is that your text message to
22 Mr. Fanning describing your interpretation of
23 the call with Mr. Sheridan?

24 A. Yes.

25 Q. Okay. And if you go over to the

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2 other side of the page, it's on the second page
3 of this exhibit, it looks like Mr. Fanning
4 responds, this is at 10:59 a.m., "OK. Good.
5 Anything mentioned on the repayment period?
6 And are they going to send our revised
7 agreement over?"

8 Do you see that?

9 A. Yes.

10 Q. Is that the response you received
11 from Mr. Fanning on that day?

12 A. I assume so, yes.

13 Q. Going back to your side of the
14 conversation, it looks like you write back at
15 11:03 a.m., "No, but we should stick to nine
16 months from July 1. Let's get a draft to him."

17 Did I read your response correctly?

18 A. Yes.

19 Q. Does that refresh your
20 recollection --

21 A. I mean, I think that answers your
22 earlier question. So we must not have spoken
23 about the repayment period and my suggestion
24 was nine months from July.

25 Q. My question, sir, is, does that

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2 refresh your recollection that you expected a
3 written agreement to be entered --

4 A. Oh.

5 Q. -- reflecting the month-to-month
6 arrangement?7 A. I suggested that we get a draft of
8 that arrangement, yes, to them.9 Q. And in your response to Mr. Fanning,
10 you also clarify that you did not discuss the
11 repayment period with Mr. Sheridan, correct?

12 A. That's correct.

13 Q. And your direction to Mr. Fanning is
14 that you should insist -- that Frontier should
15 insist on a nine-month repayment period; is
16 that right?

17 A. That was my suggestion.

18 Q. And from July 1 -- the repayment
19 would not begin until July 1 in your view
20 pursuant to your request, right?

21 A. That is exactly what I said.

22 Q. Okay. Going back to Mr. Fanning's
23 side of the conversation, it looks like he
24 responds at 11:04 a.m., "They have our draft.
25 I'll follow up with Jane."

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2 A. Yes, I am basically bringing him up
3 to speed on what Airbus has offered.

4 Q. And did you receive a response from
5 Mr. Sheridan to this text, to your memory?

6 A. I don't recall.

7 Q. Let me show you the next exhibit,
8 which is Dempsey Exhibit 12.

9 MR. BUTLER: It's a document bearing
10 Bates numbers AMCK17769 through 17771.

11 (Dempsey Exhibit 12, E-Mail Chain,
12 Bates Stamped AMCK17769 through 17771,
13 marked for identification.)

14 Q. And this is a series of e-mails, an
15 e-mail chain. The most recent e-mail in the
16 chain is Monday, April 13, from Paul Sheridan
17 to you.

18 But I want to start with the e-mail
19 a little -- in the middle of the page which
20 appears to be an April 13 e-mail from you to
21 Paul Sheridan.

22 Do you see that?

23 A. Yep.

24 Q. And does this appear to be an e-mail
25 that you sent to Paul Sheridan on April 13,

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2 2020?

3 A. Yep.

4 Q. And, again, in this e-mail, are you
5 asking him, once again, whether a two-month
6 delay would be okay?

7 A. (Document review.)

8 I'm asking -- I'm spelling out what
9 Airbus has offered us.10 Q. And then in the second paragraph of
11 your e-mail you write, "I understand that you
12 were looking for a six-month delay, however,
13 that is impractical given the advanced nature
14 of the aircraft production. Please confirm
15 that you can support" -- "please confirm you
16 can support the revised schedule."

17 Did I read your e-mail correctly?

18 A. Yes.

19 Q. So I think this is consistent with
20 what you said before, but did you understand,
21 at this time, that AMCK was -- had been looking
22 for a six-month delay, but you were only able
23 to get to this point a two-month delay from
24 Airbus?

25 A. That's correct.

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2 Q. Going back to Paul's e-mail at the
3 top of the page, it looks like he responds to
4 you on the same day, and he says, "Hi Jimmy,
5 apologies for the slow response, but I was
6 waiting for some feedback from the
7 shareholders. Essentially we want to tie the
8 deliveries to having no outstanding deferrals
9 so it would only work if we recast the deferral
10 agreement."

11 So my question, sir, is, what did
12 you understand Mr. Sheridan to be saying when
13 he referred to "no outstanding deferrals"?

14 A. He means -- I can't put words in his
15 mouth, but my understanding is that he means
16 that your rent is paid up to date.

17 Q. And in this e-mail, does
18 Mr. Sheridan say one way or the other whether a
19 two-month deferral would be acceptable to AMCK?

20 A. Sorry. Could you repeat that,
21 please?

22 Q. I said, in this response from
23 Mr. Sheridan, does he say one way or the other
24 whether a two-month delivery delay from Airbus
25 would be satisfactory to AMCK?

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2 A. He says, essentially, we want to tie
3 the deliveries to having no outstanding
4 deferrals, so it would only work if we recast
5 the deferral agreement.

6 Q. Right. And my question, sir, is,
7 does he say anything about whether the
8 two-month delay that you wrote him about would
9 be acceptable to AMCK?

10 A. On condition that we had no
11 outstanding deferrals. So he makes the comment
12 that he may be able to work this, but he wants
13 no outstanding deferrals.

14 Q. So did you understand Mr. Sheridan
15 to be saying, if Frontier gets current on its
16 rent, this might work?

17 A. He didn't say that. He said,
18 essentially, we want to tie the deliveries to
19 having no outstanding deferrals, so it would
20 only work if we recast the deferral agreement.

21 Q. And did you understand this to mean
22 that Mr. Sheridan wanted Frontier to get up to
23 date on its rent payments?

24 A. You would have to ask Paul Sheridan.

25 Q. I'm asking, sir, about your

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2 understanding.

3 A. My interpretation of this e-mail
4 was, before the next aircraft delivery, you
5 have to have all outstanding rent paid, and so
6 the next aircraft delivery in this case was
7 June.8 Q. Are you saying that your
9 interpretation of this e-mail from Mr. Sheridan
10 was that you didn't have to pay rent until
11 June?12 A. If you go back to the previous
13 schedule -- our previous e-mail, I said to him
14 the first aircraft was delivered sometime in
15 June, the next two in July. It's in this third
16 sentence of the first paragraph of the e-mail
17 dated April 13 at 14:31.18 So I say the first aircraft were
19 delivered sometime in June, the next two in
20 July.21 He then responds to me saying,
22 essentially, we want to tie the deliveries to
23 having no outstanding deferrals, so it would
24 only work if we recast the deferral agreement.

25 My deduction on that comment is you

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2 would have to be up to date on rent at the
3 point of delivery of those aircraft.4 Q. And when you say up to date on rent,
5 do you mean repaying any deferred rent?6 A. That's effectively what he says, no
7 outstanding deferrals.8 Q. Going back to the question I asked
9 previously, did Mr. Sheridan say anything in
10 his e-mail one way or the other about whether
11 he would agree to the two-month delay?

12 A. Sorry. Could you repeat that?

13 Q. Yes, I asked did Mr. Sheridan say in
14 his e-mail to you on April 13, 2020, one way or
15 the other whether AMCK would agree to the
16 two-month delay proposed by Airbus?

17 A. (Document review.)

18 He says -- there is multiple
19 different things in this e-mail. He says, the
20 six-month period that they asked for was set to
21 allow for repayments of the deferred rent as
22 well as to be over the deferral period. Right?
23 We couldn't achieve his six-month period, so he
24 is walking that back.

25 He is saying in the prior sentence,

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2 essentially, we want to tie the deliveries,
3 which I spelled out now were occurring in June
4 and July to the deliveries to having no
5 outstanding deferrals.

6 And so he's saying it would only
7 work if we recast the deferral agreement. So
8 he's effectively saying that the deferral
9 agreement needs to be recast to say, you will
10 have no outstanding deferrals at the point of
11 delivery of the aircraft, which in my e-mail
12 says the next aircraft is in June. And this is
13 in April 13.

14 Q. Did you understand Mr. Sheridan to
15 be saying that the two-month delay might work
16 for AMCK if Frontier gets current on its rent
17 and repays all deferred rent by that time?

18 A. Sorry. Could you repeat? I just
19 want to make sure I understand exactly what
20 you're asking. Could you repeat the question?

21 MR. BUTLER: Why don't we reread
22 that one?

23 (Record read.)

24 A. Are you asking me do I understand?

25 MR. BUTLER: Please reread the

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2 question.

3 (Record read.)

4 A. I mean, I don't know that he's
5 saying it might work. I think what he's saying
6 is this is what we will offer you, which is no
7 outstanding deferrals at the point of delivery
8 of the next aircraft. I don't think he's
9 saying it might work. He's saying this is what
10 we essentially want to do. Essentially, we
11 want to tie the deliveries to having no
12 outstanding deferrals.

13 Q. Well, by communicating essentially
14 what he wanted to do, wasn't he communicating
15 to you that it might work?

16 A. I mean, I can't tell you what he was
17 trying to communicate. All I can do is read
18 the language that's there.

19 Q. Well, you can tell us your
20 understanding of his words. Just let me finish
21 the question.

22 Was it your understanding at the
23 time that, because he was saying or expressing
24 a willingness to do this, that it might work?

25 MR. HOSENPUDE: Objection, asked and

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2 answered, argumentative.

3 You can answer.

4 A. My understanding of what he is
5 saying is you need to have all of your rent
6 paid at the point of delivery of the next
7 aircraft.

8 MR. HOSENPUDE: Let's take a break.

9 It's 10:10.

10 MR. BUTLER: That would be fine.

11 When should we come back, David?

12 MR. HOSENPUDE: Actually, it's 10:12,
13 I misspoke. How about ten minutes?14 MR. BUTLER: Sure. Why don't we
15 throw in the extra three and resume at 25
16 after the hour?17 MR. HOSENPUDE: Reasonable. Thank
18 you.

19 (Recess taken.)

20 MR. BUTLER: I would like to mark
21 the next exhibit, which we will call
22 Dempsey Exhibit 13. It's a document
23 bearing Bates numbers FRONTIER4329 to
24 4334.

25 (Dempsey Exhibit 13, E-Mail Chain,

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2 Mr. Fanning and Mr. Thwaytes on April 23, 2020?

3 A. It looks like a group text chain.
4 So I don't know if they are specifically
5 addressed to me, but they were addressed to
6 everybody in the group.

7 Q. And the group consisted of you,
8 Robert Fanning and Spencer Thwaytes, correct?

9 A. That's correct.

10 Q. And was that kind of a typical way
11 of you to correspond with Mr. Fanning and
12 Mr. Thwaytes, all three of you together?

13 A. Depending on -- yes, sometimes we
14 would correspond like this. Sometimes we would
15 meet in person. There may be telephone calls.
16 There's multiple different communication
17 skills. It depends on what's going on at the
18 time.

19 Q. I should clarify. Is this a common
20 way for you to text Mr. Fanning and
21 Mr. Thwaytes?

22 A. Yes.

23 Q. In the first text, at the top of the
24 page, Mr. Fanning writes, "Finally a reply from
25 Jane." And it goes on. It appears to quote a

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2 message from Jane where she says, "Hi Robert,
3 we are still formulating a response based on
4 the directors' position. What remains clear is
5 shareholder unwillingness to fund a new
6 purchase if there are any payments at all
7 outstanding."

8 Did I read that correctly?

9 A. I think you missed the final
10 sentence, did you?

11 Q. At least the portion that I read,
12 did I read it correctly?

13 A. You read to the portion of the text
14 that says "outstanding".

15 Q. Okay. Well, let me complete the
16 text for you just for the sake of completeness.

17 It goes on to say, "I hope to get
18 back to you tomorrow with our thoughts on
19 possible ways forward."

20 Did I read that correctly?

21 A. That is the text that's in quotes,
22 yeah.

23 Q. And focusing on the second sentence
24 that I read there, the one that begins "what
25 remains clear," did you understand Jane's

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2 message to be that AMCK's shareholder wanted
3 Frontier to be current on all of its rent
4 payments?

5 A. It's very similar to Paul Sheridan's
6 e-mail that you shared with me before the
7 break, that they are unwilling to fund a new
8 purchase unless we have all payments up to
9 date, all rent payments up to date.

10 Q. And doesn't that imply to you that
11 they wanted all rent payments to be up to date?

12 A. It implies that they want all rent
13 payments up to date prior to funding any
14 purchase of an aircraft. Actually -- let me
15 just finish my sentence. It actually states it
16 categorically.

17 Q. It's a pretty categoric statement,
18 then, that AMCK's position was that all rent
19 payments should be up to date, correct?

20 MR. HOSENPUDE: Object to the form.
21 You can answer.

22 A. Okay. It says that the shareholder
23 is unwilling to fund a new purchase, right, if
24 there are any payments at all outstanding. So
25 there's two steps to this. They will not fund

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1 DEMPSEY - CONFIDENTIAL

2 the purchase until we are up to date on
3 payments.4 Q. I understand there are two parts to
5 it, but didn't you understand that to mean that
6 AMCK wanted Frontier to be current on its
7 payments as is required under the Lease
8 Agreements?9 A. I understood that AMCK had provided
10 us with relief from paying rent, and in order
11 to fund a new purchase of an aircraft, that we
12 had to be up to date on all rent payments.13 Q. Mr. Dempsey, isn't Ms. O'Callaghan
14 sending a clear message to Frontier Airlines
15 that AMCK wanted Frontier to pay its rent?16 MR. HOSENPUDE: Objection,
17 argumentative.

18 You can answer.

19 A. They wanted us to pay our rent in
20 order to fund the purchase of an aircraft.

21 Q. Let me show you the next exhibit.

22 MR. BUTLER: I'm going to mark, as
23 Dempsey Exhibit 16, a document bearing
24 Bates numbers FRONTIER3510 to 3513.

25 (Dempsey Exhibit 16, Text Messages,

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1

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2

Bates Stamped FRONTIER0003510 through

3

3513, marked for identification.)

4

Q. It appears to be a collection of

5

text messages involving yourself, Mr. Thwaytes

6

and Mr. Fanning. These are all texts from

7

Mr. Fanning or Mr. Thwaytes, and the date of

8

this is April 25, 2020.

9

So my first question, Mr. Dempsey,

10

is do you recognize these as texts that you

11

received as part of this group chat on

12

April 25, 2020?

13

A. Yes.

14

Q. And there is a text from Robert

15

Fanning on that date that he begins, "Jimmy,

16

finally a reply from Jane this morning."

17

Do you see that?

18

A. Yes.

19

Q. And then it appears that he quotes

20

language from a text from Jane.

21

Is that your interpretation of this

22

as well?

23

A. (Document review.)

24

I assume that that's where the text

25

came from.

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2 Q. It looks like Mr. Fanning just cut
3 and paste a text from Jane into a text to you,
4 correct?

5 A. That's my assumption.

6 Q. And in that chat from Jane, it looks
7 like she says something very similar to what
8 she said two days before. It says, "1. We
9 will be unable to fund any new delivery unless
10 all payments are up to date, so there can be no
11 deferred payments outstanding at closing."

12 My question once again is, did you
13 interpret this to be another message from AMCK
14 that they wanted Frontier to get current on its
15 rent?

16 MR. HOSENPUDE: Objection, form.

17 You can answer.

18 A. They wanted us to be current on all
19 payments to fund a new delivery that they were
20 bound to fund.

21 Q. Let me ask you this, Mr. Dempsey.
22 If you weren't able to reach
23 agreement on a new delivery, did you understand
24 that AMCK wanted all the rent to be paid?

25 A. I mean, that's a hypothetical,

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2 right?

3 Q. And I'm asking you the hypothetical.
4 Was it your understanding that, if
5 you could not reach agreement on the Framework
6 Agreement, that AMCK still wanted all the rent
7 to be paid on time?

8 A. So we understood that, and we were
9 proposing a deferral in rent, not that we would
10 not pay the rent. So there is a distinction
11 there.

12 And we understood in the situation
13 that we were in at this stage in April, that we
14 have been given rent relief but that that rent
15 relief would expire in order for them to
16 deliver a new aircraft to us, and the next
17 aircraft delivery was moved to June, from
18 initially March, into April and then into June.

19 Q. Let me show you the next exhibit.
20 MR. BUTLER: I'm marking, as Dempsey
21 Exhibit 17, a document bearing Bates
22 numbers FRONTIER338 through 342.
23 (Dempsey Exhibit 17, E-Mail Chain,
24 Bates Stamped FRONTIER0000338 through 342,
25 marked for identification.)

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2 Q. This appears to be a series of
3 e-mails. The last e-mail in the series is
4 dated April 27, 2020, from Paul Sheridan to
5 you, Mr. Dempsey.

6 I want to start by asking you about
7 the e-mail in the middle of the page, the
8 preceding e-mail, which appears to be an e-mail
9 from you to Mr. Sheridan on April 27, 2020.

10 Do you see that e-mail?

11 A. That's an e-mail from me to Paul,
12 yes.

13 Q. Yeah. Does that appear to be an
14 e-mail from you to Paul on April 27?

15 A. Yes.

16 Q. And in the second line of your
17 e-mail to Paul, towards the end, there is a
18 sentence that reads as follows, "I put a scheme
19 in place with Airbus that would facilitate
20 short-term deferrals of the aircraft on the
21 basis that you would honor your agreement."

22 Did I read that sentence correctly?

23 A. Yes.

24 Q. Does that refer to the two-month
25 delivery delay that you had been successful at

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2 negotiating from Airbus?

3 A. I agreed to a three-month deferral,
4 but yes.5 Q. Well, at this time, was it a
6 two-month deferral or a three-month deferral,
7 if you remember?8 A. Well, in the Framework Agreement it
9 was due to be delivered in March. That got
10 moved into April, and then we moved it. And
11 then as a result of conversations with Airbus,
12 that moved into June at this point -- I think
13 at this point in the conversations. It
14 subsequently got moved to July.15 Q. I see. So you're three months
16 includes the one-month delivery delay that was
17 caused by Airbus closing the Mobile facility;
18 is that right?19 A. I mean, technically the aircraft was
20 in the Framework Agreement and in the agreement
21 with Airbus to deliver in March. It then got
22 moved to early April. As a result, then, of
23 the closure of Mobile, it became uncertain as
24 to its next delivery date, but it was assumed
25 to be in early May dependent on Mobile

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2 reopening. And then that got moved to June
3 because we asked for relief, and they
4 effectively said we can do an aircraft delivery
5 in June.

6 That negotiation continued with
7 Airbus, and we managed to move that aircraft to
8 July, and it delivered in July.

9 Q. And that was still less than the
10 six-month delay in delivery that Mr. Sheridan
11 had previously requested, correct?

12 A. Yeah, if you go down in this e-mail
13 chain, you'll see where he stipulates the
14 six-month period was set to allow repayments of
15 the deferred rent, as well as to be over the
16 deferral period.

17 So our assumption, at that time, was
18 that, if we were current on rent at the point
19 of delivery, that the aircraft could deliver in
20 June.

21 Q. My question, sir, was, simply, that
22 the time period that you had negotiated with
23 Airbus, at this time, was less than the time
24 period requested by Paul Sheridan; isn't that
25 true?

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2 A. I mean, I would have to check
3 exactly what time period they were looking for
4 at this point, but he seemed to come down on
5 April 13 off six months and move to a tying
6 paying the outstanding deferred rent with the
7 delivery of the aircraft in June.

8 That's where it sat, I think, around
9 this time. And that's what's in his April 13
10 e-mail.

11 Q. The request evolved over time; is
12 that correct?

13 A. The request from AMCK evolved over
14 time. Our request is pretty consistent.

15 Q. But in terms of the six-month
16 deferral, it wasn't the case that Paul asked
17 for a six-month delay and you went and got it
18 from Airbus, correct?

19 A. Can you repeat that question? I
20 think there is multiple questions in that.

21 Q. My question is, that you described
22 how things evolved, which I think sounds pretty
23 accurate, but it did not unfold in the way that
24 Paul asked you for a six-month delay and you
25 delivered what Paul requested, correct?

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2 A. I mean, we are going back now to
3 early April when they asked for a six-month
4 delay, and we asked Airbus and Airbus said no.

5 What we -- what transpired, and it
6 developed in the conversations, you can see it
7 in the e-mails, my deduction from Paul is that
8 they were willing to give us a six-month
9 deferral and repayment of rent on the basis
10 that it was -- there was no aircraft delivery.

11 If the aircraft delivery occurred in
12 June, they wanted us to pay all outstanding
13 rent deferrals. That's where it was at that
14 point.

15 Q. In that situation, both sides would
16 have to compromise a little bit on the
17 concessions they initially requested from each
18 other, correct?

19 A. That is correct. We were willing to
20 compromise on our request for rent deferrals --
21 sorry. Let me rephrase that.

22 AMCK is offering us an alternative
23 solution, which resulted in us being up to date
24 on aircraft rent deferrals in return for them
25 turning up and financing the next aircraft

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2 delivery in June.

3 That's where it sat at that point.

4 And we were considering it.

5 Q. Focusing your attention back on your
6 e-mail to Paul on April 22, in the next
7 sentence after the one that I just read, it
8 says, "Please confirm this is the case as we
9 have a lease signed for these aircraft and are
10 willing to ensure the deferred rent is paid as
11 a CP of delivery."

12 Did I read that correctly?

13 A. Yes.

14 Q. Were you asking Mr. Sheridan for
15 confirmation that AMCK would fund deliveries if
16 they were delayed by two months?

17 A. I am following up on his e-mail
18 where he made a proposal to us, and he wants to
19 tie the deliveries -- the delivery of aircraft
20 to having no outstanding deferrals.

21 I am making a proposal to him and
22 asking for his confirmation that he agrees that
23 we will pay -- ensure that the deferred rent is
24 paid as a condition precedent of the delivery
25 on the basis that he confirms that he would

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2 fund that delivery.

3 And so I am effectively agreeing to
4 his proposal in the April 13 e-mail.5 Q. Did Mr. Sheridan provide the
6 confirmation that you were requesting in this
7 e-mail?8 A. I mean, I don't recall, but maybe if
9 you scroll up you might find it. (Document
10 review.)11 Q. Well, of course you can look at
12 this, and I was going to go to that e-mail.13 Apart from looking at this e-mail,
14 though, you don't recall Mr. Sheridan
15 confirming what you asked him to confirm; is
16 that correct?17 A. Sorry. Bear with me a second. My
18 screen has just gone wonky.

19 Okay. Can you repeat that, please?

20 Q. My question, sir, is, setting aside
21 this e-mail, which we're going to talk about in
22 a second, do you have any recollection of
23 Mr. Sheridan confirming, either orally or in
24 writing, what you asked him to confirm in this
25 e-mail?

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2 A. I don't recall.

3 Q. Focusing on the e-mail, Mr. Sheridan
4 writes back to you, "Hi Jimmy, following our
5 board meeting last week, we have been in
6 discussions with our shareholders and will need
7 to follow up with them again tomorrow morning,
8 so I won't have an update until then.

9 Apologies."

10 Did I read that correctly?

11 A. Yes.

12 Q. Certainly, in this e-mail,
13 Mr. Sheridan is not confirming any agreement
14 with you, correct?15 A. No, he is sending a holding
16 statement.

17 Q. Let me show you the next exhibit.

18 MR. BUTLER: I'm marking, as Dempsey
19 Exhibit 18, a two-page document bearing
20 Bates numbers FRONTIER12176 to 77.21 (Dempsey Exhibit 18, Text Messages,
22 Bates Stamped FRONTIER0012176 through 77,
23 marked for identification.)24 Q. This appears to be a series of text
25 messages from Robert Fanning, dated April 29,

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2 Bates Stamped AMCK016957 to 61, marked for
3 identification.)

4 Q. And the top e-mail in this chain is
5 an e-mail from Paul Sheridan to you,
6 Mr. Dempsey, dated April 30, 2020.

7 Please take a look at this, and can
8 you tell me whether you received this e-mail on
9 that date?

10 A. (Document review.) Yes.

11 Q. And take all the time you need to
12 review this, but I just want to ask you some --
13 you know, about the content of this e-mail.

14 Do you understand Mr. Sheridan to be
15 communicating to you the conditions under which
16 AMCK was willing, at this time, to fund the
17 upcoming deliveries under the Framework
18 Agreement?

19 A. Yeah, this was their latest proposal
20 to us.

21 Q. And did you understand that AMCK
22 might not fund deliveries under the Framework
23 Agreement if these conditions could not be
24 satisfied?

25 A. We understood that the first two

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2 points in his e-mail -- the first point in the
3 e-mail, where we moved deliveries to July 2020
4 and February 2021, we did not have that in
5 place -- my recollection is we did not have
6 that in place on that date, but we were working
7 towards that where we would achieve, and we
8 actually did actually achieve, moving the three
9 aircraft into July. It was effectively moving
10 one incremental aircraft from June to July.

11 And we swapped -- although in the
12 Framework Agreement, AMCK was due to deliver
13 two aircraft in the fall, we -- it is around
14 this time, but I don't believe it was right at
15 this time -- we actually swapped another
16 leasing company and got them to finance the two
17 aircraft and move AMCK to 2021. So we achieved
18 the first point.

19 The second point we understood, and
20 we were clear on that.

21 The third point was an introduction
22 of an item that was beyond anything that we
23 could do and, in my opinion, was mixing issues,
24 and it was something that was very challenging
25 for Frontier Airlines to do, and so we could

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2 not do that at this point.

3 And so that's where we were, and we
4 responded in due course about that.5 Q. My question, sir, was, did you
6 understand Mr. Sheridan to be telling you that
7 AMCK would not fund future deliveries under the
8 Framework Agreement if these conditions could
9 not be satisfied?10 A. Well, he didn't have a right under
11 the Framework Agreement not to fund on point
12 three.13 Q. I'm sorry. Please finish your
14 answer.

15 A. No, sorry. I'm finished. Go ahead.

16 Q. Did you understand Mr. Sheridan to
17 be communicating that AMCK might terminate the
18 Framework Agreement if the conditions set forth
19 in this e-mail could not be satisfied?

20 A. I need to read the e-mail.

21 (Document review.)

22 Yes, they are adding conditions to
23 the Framework Agreement by saying we need to
24 add some additional security to ensure that we
25 can obtain our shareholder funding for the

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2 deliveries.

3 So they're adding incremental items
4 to the Framework Agreement.5 Q. In your mind, was there a risk that
6 AMCK might terminate the Framework Agreement if
7 these additional conditions were not agreed to?

8 A. Could you repeat that?

9 Q. Yes. My question is, in your mind,
10 at this time, did you understand that AMCK
11 might terminate the Framework Agreement if
12 these additional conditions could not be
13 satisfied?14 A. I mean, it was unclear to me -- I
15 would have to get legal advice on whether they
16 could terminate the lease -- the Framework
17 Agreement on the basis of us not agreeing to
18 conditions that were over and above what was in
19 the Framework Agreement.20 Q. Whether they could do it legally or
21 not is a separate question, but wasn't
22 Mr. Sheridan telling you that AMCK might not
23 perform under the Framework Agreement unless
24 Frontier agreed to these additional conditions?

25 A. I think he's threatening us that, if

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2 we didn't agree to this, he would not perform,
3 correct.

4 Q. So you interpreted this e-mail as a
5 threat. Is that what you're testifying to?

6 A. He's saying, "Given the extent of
7 the damage that has done to the airline
8 industry and to airline and lessor funding
9 sources, we need to have some additional
10 security to ensure that we can obtain our
11 shareholder funding for the deliveries."

12 He is telling us that he will not --
13 or there is a doubt as to whether he can turn
14 up and fund the aircraft unless we agree to the
15 three items that are listed below.

16 Q. And did Frontier agree to these
17 three items?

18 A. No, because the process of this was
19 a continued negotiation over about a month, and
20 we had conversations about point three, and if
21 you look at my subsequent e-mail to this one,
22 you'll see that I responded to this item and
23 was incapable of agreeing to point three.

24 Q. So I guess it came as no surprise to
25 you when AMCK did terminate the Framework

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2 call you that day?

3 A. I think we had a phone call, yes.

4 Q. Do you remember what was discussed
5 on that phone call?6 A. I mean, I think I explained to him
7 that I couldn't do point three. It just was
8 not something that we could do.9 I explained -- I think I explained
10 to him where we were with Airbus, at that point
11 in time, and that we were trying to move the
12 aircraft into July. I think we had possibly
13 achieved that around this time, around
14 April 30, and I think I communicated probably
15 that to him.16 And I think he communicated to me
17 that he wanted us to be current by May 15, and
18 I mean, we debated point three, which I
19 explained to him I couldn't do.20 Q. So you were clear to him on that
21 call that point three was unacceptable from the
22 Frontier side?23 A. I mean, it was something we couldn't
24 do.

25 Q. What do you remember Mr. Sheridan

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2 saying on this call?

3 A. I think he reiterated his position
4 and said he will go and see what he can do. I
5 don't recall exactly his words, but it was
6 something to that effect. And he would come
7 back to me, I think.8 Q. Did he make any alternative proposal
9 to you on that call?10 A. No, he said he would come back to
11 me.12 MR. BUTLER: Let me mark the next
13 exhibit, which we will call Dempsey
14 Exhibit 21. It's a one-page document
15 bearing Bates number FRONTIER3542.16 (Dempsey Exhibit 21, E-Mail, Bates
17 Stamped FRONTIER0003542, marked for
18 identification.)19 Q. Mr. Dempsey, this appears to be a
20 text message in a little bit of a different
21 format. I'm not sure why text messages were
22 produced in more than one format, but there we
23 have it.24 This appears to be a message from
25 Robert Fanning to you and Spencer Thwaytes,

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2 Q. It does sound like there were a lot
3 of aircraft deliveries that were rescheduled
4 that had nothing to do with AMCK or the
5 Framework Agreement; is that correct?

6 MR. HOSENPUDE: Object to the form.
7 You can answer.

8 A. The background to that is Airbus had
9 made a decision to reduce its production by
10 40 percent. And so in light of that, there
11 were movements longer term in the aircraft
12 delivery schedule to meet the -- or to react to
13 the cut in production that Airbus made.

14 That was separate to the aircraft
15 that were built, already built and pending
16 delivery or nearly built and pending delivery
17 with Airbus, and those aircraft are the AMCK
18 near-term deliveries that got delayed three,
19 four months.

20 Q. Okay. But for whatever reason, this
21 amendment was broader than just the aircraft
22 covered by the Framework Agreement, correct?

23 A. That's correct.

24 Q. When you got this new delivery
25 schedule finalized with Airbus, did you

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2 communicate the new delivery dates for the
3 Framework Agreement aircraft to AMCK?4 A. I think we did, yeah. I think we
5 communicated it multiple times to them, either
6 in my conversations with them or we
7 communicated with them that we were working
8 towards this.9 You know, I think we kept them
10 informed as to how we were getting on.11 Q. Do you remember after -- do you
12 remember informing AMCK that this agreement had
13 been finalized with Airbus?14 A. I mean, I don't know that we had an
15 obligation to -- a notice obligation to AMCK on
16 the back of finalizing this agreement. They
17 were aware that this was happening.18 Q. And my question, sir, is, whether
19 you had an obligation or not, do you remember
20 telling anyone at AMCK that this agreement with
21 Airbus had been finalized?22 A. I don't recall specific
23 conversations subsequent to May 5 after the
24 agreement had been signed. I do recall an
25 e-mail where I was reminding Paul Sheridan he

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2 owed me a response to our conversation the
3 previous week around the proposal that he made
4 in the e-mail you showed me.

5 And I think I confirmed what we had
6 done, but I don't recall a specific
7 communication driven by signing an agreement
8 with Airbus. AMCK is not a party to the
9 agreement with Airbus.

10 Q. Well, let me mark the next exhibit,
11 which comes right on time because it's the
12 e-mail you just referenced.

13 MR. BUTLER: I'm marking, as Dempsey
14 Exhibit 23, a document bearing Bates
15 numbers AMCK17004 to 1708.

16 (Dempsey Exhibit 23, E-Mail Chain,
17 Bates Stamped AMCK017004 through 1708,
18 marked for identification.)

19 Q. This appears to be a chain of
20 e-mails, two of which are from you to Paul
21 Sheridan on May 8, 2020. You can see them both
22 on your screen. They are the first two e-mails
23 in this chain.

24 Did you send these e-mails to
25 Mr. Sheridan on May 8?

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2 the first time on May 8?

3 A. I don't recall exactly, but I think
4 that's correct. I think that was an element
5 that we were trying to get. We were trying to
6 satisfy the -- what we saw at the time was --
7 the timing of deliveries was crucial to AMCK,
8 and we were endeavoring to meet their request
9 on that item.

10 Q. Just going back to your proposal on
11 the deferred rent. I just want to clarify one
12 thing. So your proposal says, "deferred rent
13 for April and May 2020."

14 Were you seeking rent deferral for
15 April and the full month of May?

16 A. Yes.

17 Q. So that's different from the
18 proposal from Paul that -- where one of the
19 conditions was that everything had to be
20 current by May 15, correct?

21 A. Yes.

22 Q. And, in fact, your proposal that
23 you're articulating on May 8 is very different
24 from the proposal that Paul made on April 30,
25 which you promptly rejected, correct?

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2 A. We rejected his point three. We
3 were trying to negotiate his point two, and we
4 were meeting his point one.

5 As I said, up until this point, it
6 was a very fluid negotiation. And our view was
7 that we were progressing matters, albeit there
8 was one item that was a sticking point that
9 they had raised on April 30 that we couldn't
10 deliver.

11 Q. And is it correct that it was still
12 a very fluid situation when you received the
13 termination notice from AMCK later in the day
14 on the 8th of May?

15 A. I would deem that that was a
16 surprise.

17 Q. All right. Let me show you the next
18 exhibit.

19 MR. BUTLER: I have marked as --

20 A. Before you do that, I just would
21 like to go for a quick --

22 Q. Absolutely. For your information, I
23 don't have too much left.

24 A. I only need about two or three
25 minutes.

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2 before?

3 A. I don't recall. Can you scroll
4 down?

5 Q. Sure.

6 A. (Document review.)

7 I don't recall, but no.

8 Q. Okay. So you recall the May 9
9 letter and reviewing that.10 Do you recall reviewing this May 13
11 letter before it was sent out?12 A. I mean, I don't recall, but I'm not
13 saying I didn't. I just don't recall.

14 Q. Okay.

15 MR. BUTLER: Okay. Let me mark the
16 next exhibit. I'm marking, as Dempsey
17 Exhibit 27, a one-page document bearing
18 Bates number FRONTIER8058.19 (Dempsey Exhibit 27, E-Mail Chain,
20 Bates Stamped FRONTIER0008058 through
21 8059, marked for identification.)22 Q. It's a series of e-mails dated
23 April 13, 2020, and it looks like -- Gege, if
24 you scroll down -- it looks like you're giving
25 your approval on a payment to AMCK; is that

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2 correct?

3 A. Yes, we were trying to cure their
4 letter from the previous week, and so we paid
5 the rent promptly, given that we were capable
6 of doing it because we wanted to rectify the
7 situation.8 Q. So did Frontier pay all of the
9 outstanding rent owed to AMCK on May 13, 2020?

10 A. That's my understanding, yes.

11 MR. BUTLER: And, Gege, if you can
12 scroll to the next page where there is a
13 total of the rent payments listed.14 Q. Was the total amount due at that
15 time \$5,828,440?16 A. I don't recall, but I mean, that's
17 the payment I assume we made.18 Q. Do you recall that it was an amount
19 around \$5.8 million?20 A. I don't, but I mean, I don't put
21 together the payments. There's other people
22 who do that within the organization.23 Q. And what prompted Frontier to make a
24 payment to AMCK at this particular time?

25 DI MR. HOSENPUUD: Objection to the

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1

2 C E R T I F I C A T E

3

4 STATE OF NEW YORK)

5

:ss

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COUNTY OF RICHMOND)

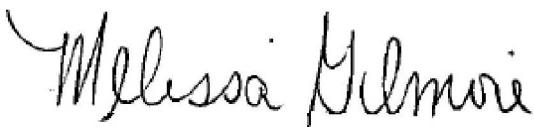
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I, MELISSA GILMORE, a Notary Public
within and for the State of New York, do hereby
certify:

That JAMES DEMPSEY, the witness
whose deposition is hereinbefore set forth, was
duly placed under oath by me and that such
deposition is a true record of the testimony
given by such witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 15th day of April, 2022.



MELISSA GILMORE

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